IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

WP(C).No. 1633 of 2007(T)

OS.589/2006 of II ADDL.SUB COURT,TRIVANDRUM

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PETITIONER:

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1. MARY MATHA COLLGE OF ENGINEERING AND TECHNOLOGY, THIRUVANANTHAPURAM- 695 121, HAVING ITS ADMINISTRATIVE OFFICE AT TUTORS LANE, STATUE, THIRUVANANTHAPURAM, REPRESENTED BY ITS CHAIRMAN, L.WILSON.

2. MR.L.WILSON, SON OF LAZER NADAR, AVIKKUZHI VEEDU, OLATHANNI, NEYYATTINKARA.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR

RESPONDENTS:

PREETHI ELIZABETH IYPE,
TC 11/1769, H17, CHARACHIRA, KAWDIAR P.O.,
THIRUVANANTHAPURAM.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the plaint in O.S.No.589 of 2006 dated 14-11-2006 filed by the respondent herein as plaintiff before the 2nd Additional Sub Court, Thiruvananthapuram.

Ext.P2: True copy of the application for attachment dated 14-11-2006 filed by the respondent herein alongwith Ext.P1 plaint.

Ext.P3: True copy of the judgment dated 21-12-2006 in W.P.(C) No.34164/06 passed by this Honourable Court.

Ext.P4: True copy of the sale deed bearing No.91/05 of SRO, Neyyattinkara dated 10-1-2005.

Ext.P5: True copy of the possession certificate dated 5-7-2006 issued by the Village Officer, Neyyattinkara.

Ext.P5(a): True copy of the Encumbrance Certificate dated 04-07-2006 issued by the SRO, Neyyattinkara.

Ext.P5(b): True copy of the Tax Receipt dated 6-7-2006 issued by the Village Officer, Neyyattinkara.

Ext.P5(c): True copy of the Valuation Certificate dated 21-12-2006 issued by the Tahsildar, Neyyattinkara.

Ext.P6: True copy of the order passed by the Vacation Court, Thiruvananthapuram dated 30-12-2006 in I.A.No.3319 of 2006 in O.S.No.589 of 2006.

// True copy //

P.A. to Judge

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M.N.KRISHNAN, J.

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W.P.(C)NO.1633 OF 2007

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Dated this the 2nd day of February 2007

JUDGMENT

This writ petition is filed to quash Ext.P6 order passed in O.S.589/06. The suit is one for realisation of the amount due from the defendants. The defendants filed an application I.A.3319/06 for lifting the attachment accepting the security furnished and release the vehicle KL 01 AA 8594 and also to recall the order issuing the attachment of the other vehicles attached with this. The matter was considered by this court also in an earlier writ petition and this court directed the trial court to consider whether the security furnished by the petitioner is sufficient or not and pass appropriate orders. The second defendant proposed to furnish security in the form of immovable property which belong to his son having an extent of more than four acres. The trial court on consideration of the report of the Tahsildar found that the property is quite valuable and it will be sufficient to cover the amount claimed in the plaint. But nevertheless the court was of the view that since the property belongs to a 3rd person, it cannot be accepted as furnishing

security and therefore dismissed the claim for release of attachment. It is under order 38 Rule 5 the court can order attachment of the movables or immovables as the case may be after giving sufficient opportunity to the defendants to furnish security and after issuing a show cause notice. Movables that are attached are vehicles and they are lying idle in the court compound without being used by nobody. So far as the plaintiff is concerned, the matter to be looked into is that in case there is a decree in his favour whether it will be defeated by allowing the defendants to dispose of there property. The principles of attachment are to be exercised most judiciously and the object of preserving the interest of the parties are also to be taken into consideration while passing a final order in the matter.

2. The property proposed to be furnished as security belongs to none other than the son of the 2nd defendant. The said son is prepared to offer the immovable property as security which even according to the trial court will be sufficient to discharge the amount in case of a decree by the court. The only question is whether the property belonging to a third person can

be furnished as a security or not. The learned counsel for the writ petitioner has cited before me a decision of the Andra Pradesh High Court reported in **Adduru Dasaratha Rami Reddy v. Vamireddy Vishnu [AIR 1992 AP 307]**. In that case, the court held that the property of a third person may be also furnished as security. What is important is that when a security is furnished, the court must have control over the security and the court must be in a position to deal with the property whenever it wants including in the case of satisfaction of the decree in case such a decree is eventually passed. Now the encumbrance certificate, the title deed, the valuation and undertaking affidavit are all filed by the 3rd party promising to undertake and wipe off the liability of the defendants in case they suffer a decree by giving their property as security. Therefore, I feel there is nothing wrong in accepting the said security if the court is satisfied that the court will get complete control to deal with the property and that it can be made use of when situation arises. Therefore, the technical findings of the trial court the security furnished by a 3rd party cannot be

accepted is only liable to be set aside and I do so. Therefore, the writ petition is allowed and the trial court is directed to release the vehicles which is under attachment after getting satisfied itself regarding the furnishing of security in the form of immovable property tendered by the 2nd defendant's son. In order to make it leak proof it may also take affidavit from the second defendant's son undertaking that he will not attach, alienate or encumber the property without the sanction or permission of the court. When such an affidavit is filed and the necessary bonds are executed as contemplated by law, the property be taken as security and immediately the movables may be released so that it can made use of by some person. I am also making a direction to the defendants not to transfer the movables till the disposal of the case.

Writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

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